IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

Crl.MC.No. 3942 of 2006()

CC.568/1995 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER:

K.P. STANELY, AGED 52,
S/O.LATE PAPPU, KOLAPILLIL HOUSE, POER HOUSE
EXTENSION ROAD, NORTH, ERNAKULAM, COCHIN-18,
NOW RESIDING AT PALLIPURATH HOUSE,
KOLLAMPARAMBIL, KARUKAPPILLI, ELAMAKKARA,
COCHIN-26.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SRI.E.M.MURUGAN

RESPONDENTS:

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1. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. MRS.ROSAMMA STANELY,
SAMYPADY STREET, ELAMAKKARA, ERNAKULAM.

3. P. SINDHYA, KOLLAPPILLIL HOUSE,
POWER HOUSE EXTENSION ROAD,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3942 of 2006

Dated this the 30th day of November 2006

O R D E R

The petitioner, along with another, faces indictment in a prosecution under Section 494 I.P.C. The crux of the complaint is that while the marriage of the petitioner with the complainant is subsisting, he has contracted another marriage with the second accused. Cognizance has been taken. The case was once dismissed. But by the order in Crl.R.P.No.765/1996 dated 03/02/2006, that order was set aside and the court below was directed to proceed with the matter. Adequate safeguards for protecting the interest of the petitioner - that he can apply for exemption, is already made by another Bench of this Court in the said decision.

2. The petitioner has now come to this court. He contends that the second marriage is even allegedly not a valid marriage. No marriage has taken place in the church. That alleged marriage is even allegedly only by a registered agreement. The purpose is being questioned. The learned counsel for the petitioner rightly points out that, in a prosecution under Section 494 I.P.C, it must be proved that the subsequent marriage is also a valid marriage but for the fact that it is bigamous .

3. In the instant case, going by the averments in the complaint, there has only been a registered document of marriage executed between the petitioner herein and the co-accused. In these circumstances, powers under Section 482 Cr.P.C may be invoked to quash the proceedings. This, in short, is the prayer.

4. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this court while considering invocation of the extraordinary inherent powers under Section 482 Cr.P.C. In every case where the accused may be entitled to discharge or acquittal, eventually this court will not lightly invoke the powers under Section 482 Cr.P.C. Has justice failed? Is there miscarriage of justice? These are the crucial questions which this court will have to consider. It is significant that there is no specific denial even, that there has been a registered marriage and subsequent co-habitation by the petitioner and the co-accused as husband and wife. I need only say that in the facts and circumstances of this case, I am not persuaded to conclude that there is failure or miscarriage of justice. I do not venture to express any opinion on merits about the contention of the petitioner that he is entitled for discharge or acquittal. The learned Magistrate, I have no hesitation to agree, must consider the plea for discharge under Section 245(1) Cr.P.C. The petitioner can

either claim discharge under Section 245(2) or participate in the enquiry under Section 244 and claim discharge under Section 245(1) Cr.P.C. The proceedings have been initiated as early as in 1995 and I am in agreement with the learned counsel for the petitioner that the matter must be disposed of expeditiously. An appropriate decision on the question of framing charges must be passed by the learned Magistrate after 244 enquiry, as expeditiously as possible, at any rate, within a period of three months from the date on which a copy of this judgment is placed before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006